



April 26, 2010

VIA FEDERAL EXPRESS

Carol Ropski
U.S. EPA-Region 5
Emergency Enforcement Section
77 W. Jackson Blvd, SE-5J
Chicago, Illinois 60604-3590

Re: Bautsch-Gray Mine Site, Suite ID#B5TS

Dear Ms. Ropski:

On behalf of my client, U.S. Bank National Association acting as Plan Trustee, I am responding to the April 8, 2010 General Notice of Potential Liability and Request for Information ("General Notice") under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, directed to "EaglePicher" care of Karyn B. Marsh, Esq., Gibson, Dunn & Crutcher LLP. U.S. Bank National Association serves as the Plan Trustee for the Plan Trust created in the bankruptcy proceeding of *In re: EaglePicher Holdings, Inc., et al.*, Case Nos. 05-12601 (Bankr. S.D. Ohio).

The General Notice alleges that "EaglePicher may have owned or operated the [Bautsch-Gray Mine Site] or generated or transported hazardous substances that were disposed of at the Site." Documents in USEPA's file regarding the Site contend ownership by "Eagle-Picher Industries, Inc." of a ½ interest in portions of parcels 4 and 7 of the Site from 1969 to 1973. The documents also contend that a ten-year mining lease was granted to "Eagle-Picher Company" for a portion of Parcel 5 beginning in 1964.

In 1991, Eagle-Picher Industries, Inc., the entity identified in USEPA's records regarding the Site, along with other affiliated debtors, filed a voluntary petition for relief under Chapter 11 of United States Bankruptcy Code. *See In re Eagle-Picher Industries, Inc.*, Case Nos. 1-91-10100, *et al* ("EP I"). In November 1996, the United States Bankruptcy Court for the Southern District of Ohio and the United States District Court for the Southern District of Ohio jointly confirmed the reorganization plan filed by the debtors in the bankruptcy. *See In re Eagle-Picher Industries, Inc.*, 203 B.R. 256 (Bankr. S.D. Ohio 1996) ("EP I Confirmation Order"). In April 2005, the reorganized debtors from EP I, including EaglePicher Incorporated, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

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In June 2006, the United States Bankruptcy Court for the Southern District of Ohio confirmed the plan filed by the debtors therein ("EP II Confirmation Order"). *See Eaglepicher Holdings, Inc., et al, Jointly Administered Case Nos. 05-12601, et al.* (United States District Court for the Southern District of Ohio), Order Confirming Debtors' Second Amended Joint Plan of Reorganization (June 28, 2006). The EP II Confirmation Order discharged claims against these reorganized debtors which were not raised by a creditor prior to the bar date in the matter. Further, under the plan, the reorganized debtors were dissolved and the Plan Trustee given the responsibility of administering the remaining estates.¹

USEPA was a party to both of these prior proceedings and USEPA's proof of claim in EP II failed to raise a claim regarding this Site. As such, the discharges that exist as a result of these prior proceedings bar this claim. Furthermore, even if USEPA's CERCLA claim regarding the Site was not discharged, claims against EaglePicher Incorporated, the reorganized debtor in EP II, are subject to zero in distribution under the EP II Confirmation Order. The Plan Trust is happy to discuss the bankruptcies with USEPA in greater detail and will provide the aforementioned bankruptcy documents as part of the Plan Trust's forthcoming response to the information requests contained in the General Notice. However, it cannot agree to enter into an agreed order regarding the Site under these circumstances.

My contact information is enclosed if you have any questions. Please direct any further communications regarding this matter to my attention. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. DeMonte', with a long horizontal line extending to the right.

Jessica E. DeMonte

cc: P. Casey Coston, Esq.
Karen A. Winters, Esq.

¹ In addition, the assets of the debtors that were transferred to newly form corporations under the EP II Confirmation Order were transferred free and clear of all liens and claims, and the new corporations were deemed to have no successor liability for any claims against the debtors in EP II.